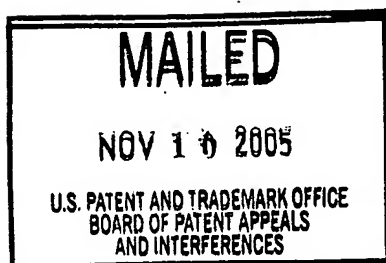


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte Todd Allen Brown

Appeal No. 2005-1964
Application No. 10/064,997

ON BRIEF

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 15 to 25 and 27 to 31, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates generally to vehicle braking and controllability control systems, commonly referred to as stability control systems, and specifically to a braking and controllability control method and system for a vehicle with regenerative braking that optimizes energy recovery while reducing vehicle oversteer and understeer by providing braking control for individual non-regenerative braking wheels (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Kade et al. (Kade)	5,511,859	Apr. 30, 1996
Tatara et al. (Tatara)	6,704,627	Mar. 9, 2004

Claims 15, 16, 19, 20, 22 to 25 and 27 to 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kade.

Claims 17, 18 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kade in view of Tatara.

Attention is directed to the brief (filed August 10, 2004) and the answer (mailed December 27, 2004) for the respective positions of the appellant and the examiner regarding the merits of these rejections.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 15 to 25 and 27 to 31 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re

Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg., Inc. v. SGS Importers Int'l., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), cert. denied, 117 S. Ct. 80 (1996), although "the suggestion more often comes from the teachings of the pertinent references," In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). The range of sources available, however, does not diminish the requirement for actual evidence. A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." Thus, when an examiner relies on general knowledge to negate patentability, that knowledge must be articulated and placed on the record. See In re Lee, 277 F.3d 1338, 1342-45, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002). See also In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

In the rejection before us in this appeal (answer, pp. 4-6) the examiner (1) set forth the pertinent teachings of Kade; (2) ascertained¹ that Kade does not teach reducing the regenerative braking applied to the rear axle while increasing the non-regenerative braking to a single selected wheel of the front axle to maintain the actual vehicle controllability value within a predetermined target value; (3) stated that it is notoriously well known in the art to provide an ABS system, as shown by Kade, with traction or stability control systems which increase the braking force applied to at least one selected wheel to increase traction or decrease lateral slip; and (4) concluded that one having ordinary skill in the art would have found it obvious at the time the invention was made to have designed the system of Kade to reduce the regenerative braking to the rear wheels, while increasing the friction braking (non-regenerative braking) to a single selected wheel of the front axle during emergency braking or sudden stops to maintain optimal control of the vehicle.

It is our view that the examiner, in this case, has failed to establish a prima facie case of obviousness in that the examiner has not presented any evidence that would have led one of ordinary skill in the art to have modified Kade as set forth in the rejection. In that regard, even if traction or stability control systems were known which

¹ After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

increase the braking force applied to at least one selected wheel to increase traction or decrease lateral slip that would not have made it obvious at the time the invention was made to a person having ordinary skill in the art to have designed the system of Kade to reduce the regenerative braking to the rear wheels, while increasing the friction braking (non-regenerative braking) to a single selected wheel of the front axle during emergency braking or sudden stops to maintain optimal control of the vehicle.

For the reasons set forth above, the decision of the examiner to reject claims 15 to 25 and 27 to 31 is reversed.²

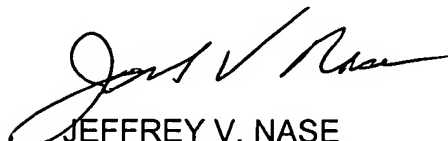
² We have reviewed the patent to Tatara additionally applied in the rejection of claims 17, 18 and 21 but find nothing therein which makes up for the deficiency of Kade discussed above.

CONCLUSION

To summarize, the decision of the examiner to reject claims 15 to 25 and 27 to 31 under 35 U.S.C. § 103 is reversed.

REVERSED


CHARLES E. FRANKFORT
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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DYKEMA GOSSETT PLLC
2723 SOUTH STATE STREET
SUITE 400
ANN ARBOR, MI 48104

JVN/jrg